United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

75-2100

To be argued by
RALPH L. McMURRY

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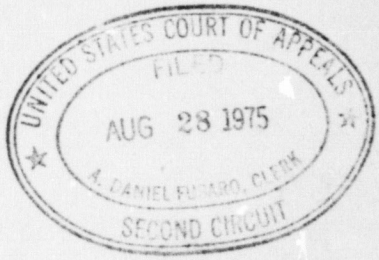
P/S

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT



UNITED STATES ex rel. LEON WASHINGTON,

Petitioner-Appellant,

-against-

LEON J. VINCENT, Warden, Greenhaven State Prison,

Respondent-Appellee

BRIEF FOR RESPONDENT-APPELLEE

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BRIEF FOR RESPONDENT-APPELLEE

Preliminary Statement

This is an appeal from a decision of the United States District Court for the Eastern District of New York, Constantino, J., denying petitioner-appellant's application for a writ of habeas corpus.

Question Presented

Whether the alleged suppression by the prosecutor of an alleged "bargain" with a state witness violates due process, (1) where both defendant and his counsel knew of the alleged bargain prior to trial, (2) where the defendant took the stand and made no attempt to contradict or impeach the witness'

denial that such a bargain existed and in fact committed perjury by denying knowledge of an alleged bargain, and (3) where defendant's guilt was otherwise proved beyond a reasonable doubt?

Statement of Facts

On February 4, 1966, Max Regenstrich, manager of a Brooklyn liquor store, was shot dead during a holdup.

Petitioner-appellant (hereafter petitioner) was indicted for the crime. Petitioner was convicted, following a jury trial in Kings County, Supreme Court (McDonald, J.), of murder in the first degree. The conviction was affirmed on direct appeal by the Appellate Division (32 A D 2d 613) and by the State Court of Appeals, 27 N Y 2d 649.

Petitioner then sought to attack his conviction collaterally by way of a writ of error coram nobis in Kings County Supreme Court. Petitioner in a statement sworn to September 9, 1970, in support of his coram nobis application,* claimed that a prosecution witness, one Martin Anderson, had testified against petitioner because an assistant district

*A copy of this sworn statement is annexed as Exhibit "A".

attorney had promised Anderson he would see what he could do to help him on an outstanding weapons charge. Petitioner claimed that this alleged promise of assistance by the prosecution was improperly suppressed when the prosecutor failed to correct Anderson's denials, while testifying at trial, that there was any such bargain. Petitioner also alleged in his sworn coram nobis statement that Anderson told him of this alleged bargain before the trial, and that he (petitioner) never told his trial counsel of Anderson's statement.*

During the trial, Martin Anderson testified for the State. On several occasions during cross-examination, Anderson denied that any bargain had been made with the prosecutor in exchange for his testimony. The prosecutor said or did nothing in response to these denials.

Petitioner took the stand at the trial in his own behalf. Petitioner denied on the stand that he knew of any reason why Anderson would falsely accuse him of murder in the following colloquy with the trial court:

*This latter assertion was contradicted by his own defense counsel who conceded that he was informed by his client of this conversation prior to trial.

"THE COURT: Any reason you could think of why he should try to accuse you of murder?

THE WITNESS: Well, I know he's not loved me.

THE COURT: I didn't ask you that. Is there any reason why he would falsely accuse you of murder?

THE WITNESS: He could be trying to protect someone. I don't know.

THE COURT: But why you?

THE WITNESS: I don't know.

THE COURT: All right."

Petitioner repudiated Anderson's other testimony, and thus in effect denominated Anderson a perjurer.

A hearing was held on the coram nobis application before Justice McDonald, the same judge who presided at petitioner's trial. Certain trial testimony was introduced into the record, and the trial prosecutor testified for the People. Petitioner's trial counsel, Patrick Wall, also stated he had been advised of the alleged bargain prior to trial.

Justice McDonald found that a promise of sorts had been made by the prosecutor and that the prosecutor had failed to correct Anderson's denials at trial of a bargain. Accordingly, following the dictates of People v. Savvides, 1 N Y 2d 554 (1956), the court vacated the judgment. However, in granting the writ of error coram nobis, the court stated that it was convinced that any error was harmless because in its opinion the evidence at trial sans Anderson's testimony was sufficient to prove defendant's guilt beyond a reasonable doubt. The court declined to apply the harmless error rule, however, because it considered that only an appellate court could hold this kind of error harmless in the circumstances of this case.

On appeal, the Appellate Division reversed by a vote of three to two. The majority found that the Savvides rule did not apply because both petitioner and his counsel knew Anderson's testimony false and yet deliberately and perjuriously refrained from disclosing that fact. Accordingly no fraud was perpetrated on the defendant. The majority also found that proof of defendant's guilt was undisputed and played little part, if any, in the defendant's conviction. The court ruled

accordingly that the prosecutor's error was harmless beyond a reasonable doubt. The dissenting justices, though not convinced that petitioner or his counsel actually had knowledge of the Anderson bargain, also believed the error was harmless beyond a reasonable doubt in view of the overwhelming proof of guilt, but preferred to let the State Court of Appeals put any limiting instruction on Savvides.

The State Court of Appeals affirmed by a vote of six to one. The majority followed the opinion of the majority in the Appellate Division, although it did not reach the harmless error question. Chief Judge Fuld in dissent thought Savvides was a per se rule that should not be watered down "one tittle".

Petitioner then petitioned for a writ of federal habeas corpus. Judge Constantino, in denying the writ, adopted the analysis of the majorities in the state appellate courts. In addition, the court took note of Justice McDonald's observations that the evidence was sufficient to convict petitioner without Anderson's testimony.

POINT I

THE ALLEGED PROSECUTORIAL SUPPRESSION OF AN ARRANGEMENT BETWEEN THE PROSECUTOR AND A STATE WITNESS DID NOT VIOLATE DUE PROCESS, WHERE (1) BOTH PETITIONER AND HIS COUNSEL KNEW OF THE ALLEGED ARRANGEMENT PRIOR TO TRIAL; AND (2) PETITIONER, WHO TOOK THE STAND, DID NOT ATTEMPT TO CONTRADICT THE WITNESS'S TESTIMONY THAT SUCH AN ARRANGEMENT DID NOT EXIST AND IN FACT COMMITTED PERJURY IN DENYING KNOWLEDGE OF THE ALLEGED ARRANGEMENT.

At the outset, it must be made clear what this case is not. This is not the usual case of prosecutorial suppression wherein exculpatory evidence is concealed from and is never discovered by the defense. People v. Savvides, supra; Napue v. Illinois, 350 U.S. 264 (1959); United States v. Keogh, 391 F. 2d 138 (2d Cir. 1961); Brady v. Maryland, 373 U.S. 87 (1963). On the contrary, in this case the alleged bargain with Anderson was known to petitioner and his counsel prior to trial. Consequently, although the prosecutor concededly should have corrected Anderson's testimony, there was in fact no concealment of any evidence not already known to the defense.* Accordingly,

*The People conceded in the state courts that the Assistant District Attorney who handled the case erred in not correcting Anderson's denial that the prosecutor promised him some kind of consideration in return for his testimony. Respondent herein did not challenge that concession below and does not challenge it now. However, a close reading of the coram nobis minutes reveals the alleged "understanding" to be a rather vague one. For a treatment of a similarly vague and suppressed "understanding" see United States ex rel. Dale v. Williams, 454 F. 2d 763 (3rd Cir. 1972).

the instant case is not a "suppression" case at all, and the state appellate courts and the court below were quite correct in denying relief.

Not only did defense counsel and petitioner have advance knowledge of the alleged bargain, but neither did anything when Anderson perjured himself on the stand. This knowing toleration of perjury cannot now be claimed as a basis for post-conviction relief. At the very best, petitioner could have attacked Anderson as a "bought" witness when he (petitioner) took the stand in his own defense. However, this he utterly failed to do.

Not only did petitioner not attack Anderson's credibility when he had an obvious opportunity to do so, petitioner proceeded to commit perjury by testifying at trial that he did not know why Anderson might falsely accuse him of murder. This is in direct contradiction with petitioner's sworn statement in support of his coram nobis application in which petitioner admitted knowledge in advance of trial that Anderson planned to falsely testify against petitioner in exchange for leniency from the prosecutor.* Significantly, peti-

*The reasons for the delay in raising the instant claim have never been revealed. Although petitioner knew of the alleged bargain prior to trial and hence knew that Anderson's testimony was perjurious, no claim of suppression was raised on direct appeal and three years elapsed before petitioner claimed "suppression".

tioner's brief does not once mention his own perjury. Petitioner cannot attempt to secure post-conviction relief on the basis of information which at trial he has perjuriously denied having and when he utterly failed to challenge or impeach Anderson's testimony when he had the opportunity to do so.

In circumstances paralleling the case at bar, where defendants have had advance knowledge of allegedly "suppressed" information and knowingly failed to correct or challenge false testimony, the courts have uniformly found no due process violation. In the leading case of Green v. United States, 256 F. 2d 483 (1st Cir. 1958), the defendant sought collateral relief on a claim that the prosecution suppressed a conversation between a co-defendant and a United States attorney. Green, however, had been aware of the conversation prior to trial. The Court ruled (at 484):

> "It is clear that this asserted information, of which Green was admittedly aware before he went on trial, cannot now be used as a basis for attacking the judgment of conviction collaterally in a proceeding under 28 U.S.C. § 2255 ... Green cannot have it both ways. He cannot withhold the evidence, gambling on an acquittal without it, and then later, after the gamble fails, present such withheld evidence in a subsequent proceeding under 28 U.S.C. § 2255."

The Court rejected Green's argument that he could not be required to disclose the conversation because to do so would place him in the position of having to cast aside his privilege against self-incrimination and his constitutional right not to testify. In the instant case, such a problem does not even arise since petitioner chose to take the stand.

The Green principle has been followed by every Circuit which has since considered the question. In Evans v. United States, 408 F. 2d 369 (7th Cir. 1969), the court ruled that

> "...the fact that the alleged statement was known to petitioner and his counsel during the trial compelled petitioner to raise this issue then or not at all. When a criminal defendant, during his trial, has reason to believe that perjured testimony was employed by the prosecution, he must impeach the testimony at the trial ..."

The Court then went on to quote the passage from Green, infra, p. 9. Similarly, in Decker v. United States, 378 F. 2d 245 (6th Cir. 1967), the Sixth Circuit cited Green in ruling that deliberate toleration of commission of perjury cannot be later employed to gain judicial relief by

one who connived in the use of the perjury. In Saville v. United States, 451 F. 2d 649 (1971), the First Circuit had occasion to reaffirm its decision in Green in a case where the accused sought to collaterally attack his conviction with information he had withheld at trial.

In United States v. Branch, 261 F. 2d 530 (2d Cir. 1958), Judge Swan, in an opinion concurred in by Moore and Kaufman, JJ, denied a defendant-appellant the right to challenge perjured testimony of a narcotics agent who testified that a given special agent was present at the time that Branch sold narcotics. In rejecting the defendant's challenge, the Court pointed out that Branch heard the testimony and had the opportunity to call the special agent prior to the conclusion of the trial to refute the testimony attacked on appeal as perjurious. The deliberate choice not to refute the challenged testimony at trial barred further attack on appeal.

In Taylor v. United States, 229 F. 2d 826, 833 (8th Cir. 1956), the Eighth Circuit ruled:

> "To allow an accused person, with actual advance knowledge that perjured evidence was knowingly to be used by the prosecution, to remain silent as to that situation during the entire trial and after his conviction to attempt

> to set the judgment aside by collateral attack would seriously interfere with the proper orderly administration of criminal law. The accused is fully entitled to present, at his trial, all evidence in defense of which he has actual knowledge at that time. He cannot remain silent as to such thus hoping to gain an acquittal on the evidence actually presented and thereafter expect to have a second trial and chance for acquittal on evidence he has knowingly concealed at the time of trial. He must be deemed to have waived his rights because of such inaction."

It is clear that in fashioning a limited exception to the Savvides rule, the state appellate courts in this case were simply following prior law as expounded in numerous federal Circuits. See also United States ex rel. Polhill v. Otis, 316 F. Supp. 334 (S.D.N.Y. 1970); Davis v. United States, 316 F. Supp. 913, 915 (E.D. Tenn. 1970); Gironda v. United States, 283 F. 2d 911 (2d Cir. 1960); United States v. Soblen, 301 F. 2d 236, 242 (2d Cir. 1962), cert. den. 82 S. Ct. 1585; United States v. Purin, 486 F. 2d 1363, 1368, fn. 2 (2d Cir. 1973); Wallace v. Hocker, 441 F. 2d 219 (9th Cir. 1971); United States v. Rosenberg, 200 F. 2d 666, 668 (2d Cir. 1952), cert. den. 345 U.S. 965, reh. den. 345 U.S. 1073.

In his brief, petitioner argues only that the inferences relied on by the court below and the state appellate courts were based on a misapprehension of the "role" of defense counsel and the "practical realities"* of a criminal trial. Petitioner then suggests this case should be viewed through the eyes of "experienced" defense counsel. The arguments advanced are without merit.

Petitioner asserts that he had no "actual" knowledge of the alleged bargain, but only knowledge that Anderson claimed there was such a promise. It is difficult to understand the significance of this. Surely Anderson's statement to petitioner gave petitioner "knowledge" of the alleged bargain. Certainly at the very least petitioner and his counsel were put on notice that a bargain may have been made. Given the "practical realities" of criminal trials, this possibility was almost a certainty, and it was up to defense counsel to pursue the matter.

Petitioner then asserts that he was "entitled" to believe that Anderson was telling the truth on the stand under oath and that his jail house remarks were "mere talk". This

*There is no evidentiary basis for "practical realities" in the record.

position is nonsense. Assuming arguendo that the oath has proper moral significance for the average criminal defendant,* such an argument flies in the face of the whole concept of an adversary proceeding based on cross-examination. Cross-examination presupposes that a witness may not tell the truth or may distort the truth; the purpose of cross-examination is to expose the inaccuracies and falsehoods of witnesses. Our Anglo-Saxon system of law and its very concept of crossexamination assumes that no witness is "entitled" to belief. If petitioner was "entitled" to believe Anderson's testimony on the stand simply because Anderson was under oath, there would have been no need for defense counsel to have conducted the vigorous cross-examination that he did.

Petitioner's claim that he was "entitled" to believe Anderson because of the prosecutor's silence is simply false, because petitioner himself in his sworn coram nobis statement indicates that in fact he never believed Anderson by claiming that "being a layman and ignorant of the law, he did not know that the failure of the district attorney to expose Anderson's lie was a 'fundamental error' ..."**.

* Arguing in terms of petitioner's concept of "practical realities", it is often difficult to believe that the oath is of great significance to most criminal defendants. Certainly in petitioner's case the oath has no moral significance since he himself committed perjury on the stand.

**Thus assuming "most defendants know that a prosecutor is not supposed to allow his witnesses to perjure themselves", (Br. p. 8), a statement unsupported by this record, it is clear from petitioner's own sworn coram nobis statement that he was not among the category of "most defendants".

Petitioner argues defense counsel was "entitled" to believe Anderson's version because of the prosecutor's silence on Anderson's testimony. This claim is clearly specious in view of the fact that defense counsel at trial requested the court to charge that Anderson might be an interested witness since he had several outstanding charges and thus might have something to gain in return for his testimony* (R 361). The court so charged.** (R 413). This is irrefutable proof that the defense at the trial took the position that Anderson was not "entitled" to belief and a contrary position cannot be asserted now.

Regardless of what petitioner or his counsel was "entitled" to believe regarding Anderson's testimony, the fact remains that petitioner in taking the stand had a perfect opportunity to attack Anderson as a witness whose testimony had been "bought" by the prosecution. This simply was not done. On the contrary, as noted above the petitioner perjuriously denied knowledge of any reason why Anderson would falsely accuse him of murder.

* Page numbers following "R" refer to Record on Appeal in state court. A copy of this page is annexed as Exhibit "B".
**See Exhibit "C".

Petitioner next claims that the conclusion that defense counsel had prior knowledge of the alleged bargain is based on a misapprehension of the "role" of defense counsel. This argument is without merit.

None of the courts below, explicitly or implicitly, misconceived the "role" of defense counsel. The conclusion of the various courts below did not, as defendant claims, assume that defendants never lie to their attorneys or that defense lawyers always believe their clients. The courts simply must expect - and properly so - that when information comes to the attention of defense counsel it must be actively pursued.

Petitioner complains that none of the state courts or the court below have ever suggested what counsel should have done in the situation. Of course, it was not the function of these courts to make such suggestions. However, where a defendant is charged with such a serious charge as murder, surely defense counsel could have taken the simple and not uncommon precautionary step of calling a side bar to clarify the matter. Indeed, defense counsel could simply have asked the prosecutor point blank at some point about any arrangement apart from

questioning of the witness upon the subject.*

In sum, it is difficult to conceive a more appropriate case for application of the doctrine of estoppel. The petitioner had advance knowledge of the allegedly suppressed information, thus taking the case out of the suppression category entirely, and yet did nothing about it and indeed took the stand and affirmatively denied that he knew of any reason why Anderson might falsely accuse him. In view of petitioner's subsequent sworn coram nobis statement to the contrary, this was clear perjury. While a prosecutor obviously has high ethical obligations, defendants are not without their own minimal obligations. For petitioner to attempt to exploit his own failures and perjury years later in a post-conviction collateral proceeding is utterly presumptuous.

POINT II

THE ALLEGED PROSECUTORIAL SUPPRESSION OF AN ARRANGEMENT BETWEEN THE PROSECUTOR AND A STATE WITNESS ADDITIONALLY DID NOT VIOLATE DUE PROCESS WHERE THE ERROR WAS HARMLESS IN VIEW OF THE OVERWHELMING INDEPENDENT EVIDENCE AGAINST PETITIONER

The state coram nobis judge, who was also the trial judge, stated in granting the writ that he considered the evi-

*In addition, petitioner could have attacked Anderson as a "bought" witness when he (petitioner) took the stand. As previously indicated, this was not done. Since petitioner was represented at trial by very able and experienced counsel, it is fair to suppose that such a failure was deliberate trial strategy. Perhaps counsel believed that for his client to raise this subject would only serve to suggest his own guilt to the jury.

dence at trial sufficient to prove defendant guilty beyond a reasonable doubt even without Anderson's testimony. In this view he was joined by both the majority and dissenting justices in the Appellate Division.

This judgment is quite correct. The value of Anderson as a witness was, at best, minimal. He was fully cross-examined concerning his prior criminal record and his then outstanding criminal charges. On cross-examination it was revealed that on the day of the crime Anderson had been drinking heavily and steadily since the early morning. Defense counsel cross-examined Anderson extensively about the existence of an "understanding" he may have had with the prosecution. Although Anderson denied such an understanding existed, the possibility that it did exist could not have been lost on the jury, especially where Anderson's performance as a witness generally was rather poor, defense counsel's main theme in summation was that Anderson was a "liar", and the trial court charged the jury that Anderson may or may not be (an) interested (witness) as a matter of law depending upon all the circumstances ... with respect to whether or not he has anything to gain in return for his testimony because other cases are pending against him." (R 413, Exhibit C).

In contrast to Anderson's performance was the eyewitness testimony of Mr. and Mrs. Samuel Silver, who were in the store at the time of the robbery and identified petitioner. Their testimony was beyond any significant impeachment.

It is clear that under all the circumstances the alleged error was harmless. That the doctrine of harmless error is applicable in "suppressed bargain" cases is made clear in the Supreme Court's major decision on the subject, Napue, supra, at 272. See United States v. Acarno, 408 F. 2d 512, 517 (2d Cir. 1969), cert. den. 395 U.S. 961. As was said in the case of Milton v. Wainwright, 407 U.S. 371, 377-378 (1972):

> "The writ of habeas corpus has limited scope; the federal courts do not sit to retry cases de novo but rather, to review for violation of federal constitutional standards. In that process we do not lose our eyes to the reality of overwhelming evidence of guilt fairly established in the state court ..." (emphasis added)

Summary

In this case, the petitioner would have this Court grant the Great Writ on the strength of his own perjury and knowing toleration of perjury. Such a result would be unconscionable, especially where the defendant's guilt is clear.

CONCLUSION

THE ORDER OF THE DISTRICT COURT
SHOULD BE AFFIRMED.

Dated: New York, New York
August 27, 1975

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Respondent-Appellee

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

RALPH L. McMURRY
Assistant Attorney General
of Counsel

Affidavit of Leon Washington in Support of Petition for Writ of Error Coram Nobis

STATE OF NEW YORK
COUNTY OF CAYUGA } ss.:

LEON WASHINGTON, being duly sworn deposes and says:

That he was indicted in Kings County for Murder in the First Degree, indictment #1411/1966, and was convicted after a jury trial before Hon. Miles F. McDonald. On April 17, 1967, petitioner was sentenced to imprisonment for the rest of his Natural Life.

The conviction was affirmed by the Appellate Division of the Supreme Court on the 14th day of April, 1969; the order of the Appellate Division affirming the conviction was affirmed by the New York Court of Appeals on the 16th day of June, 1970, no further appeal from the instant judgment has been taken.

Petitioner states, that shortly before his trial commenced, Ali Suba (A/K/A Martin Anderson) personally told petitioner that the district attorney had told him (Anderson) that he would see what he could do to help him on the gun case under indictment #1821/1966, if he would testify against petitioner. Petitioner further states that being a layman and ignorant of the law, he did not know that the failure of the district attorney to expose Anderson's lie was a "fundamental error" therefore, petitioner never told his trial counsel of Anderson's confession admitting that the district attorney had promised to help him with regards to indictment #1821/1966.

SUPPLEMENTARY APPENDIX

EXHIBIT "A"

Affidavit of Leon Washington in Support of Petition for Writ of Error Coram Nobis

WHEREFORE, it is respectfully requested that this Court order a hearing to enable petitioner to produce evidence and to prove all of the facts alleged in the petition.

Respectfully submitted,

LEON WASHINGTON
Petitioner-Defendant, Pro Se
135 State Street
Auburn, New York (13021)

Sworn to before me this
9th day of September, 1970.
CLARENCE C. STANTON

Notary Public, State of New York
Qualified in Cayuga County #1343
Commission Expires March 30, 1972.

sider in determining whether his failure to be present in the neighborhood later was due to flight.

12. If you find that Martin Anderson was in possession of the murder weapon at a time close to the time of the crime, then you have a right to infer that he was an accomplice in that killing, unless he satisfactorily explains his possession in a way which negates that inference.

13. If you find that a witness has deliberately lied to you with respect to a material issue, you are at liberty to reject his entire testimony.

14. I charge you as a matter of law that Martin Anderson is an interested witness.

15. In determining the credibility of Martin Anderson, you must consider whether he hopes or expects to be rewarded for his testimony by favorable or lenient treatment with respect to the two indictments presently pending against him.

16. I previously informed you that the death penalty is not involved in this case. The penalty for the crime of murder in the 1st degree is life imprisonment.

17. At no time in this case did the defendant make any confession to the police or the district attorney.

The Court: Now with respect to your requests to charge.

Mr. Wall: Do you want to do this now? Are you going to rule now on my requests?

The Court: I'm going to indicate to you now what I will do and then so you will be prepared to take exceptions to them as you go along.

SUPPLEMENTARY APPENDIX
EXHIBIT "B"

you the defendant in this case is an interested witness as a matter of law. I charge you that the witness Anderson may or may not be interested as a matter of law depending upon all of the circumstances as to whether or not he's an accomplice or not and also with respect to whether or not he has anything to gain in return for his testimony because other cases are pending against him.

I charge you with regard to Mrs. Martha Washington, Hrs. Johnson and Jo Ann Atkins in determining their interest you may consider their relationship to the defendant in this case.

All right. Swear the court officers.

(Court Officers sworn.)

The Court: The alternate jurors will be held separate and apart from this moment on. They'll have to have their lunch served to them separately because the other jurors may deliberate while they're eating. That's one of the two things you could do, eat and deliberate. The case is in your hands.

(Jury retired for lunch and deliberation at 12:50 noon.)

(In the robing room, 3:45 p.m.)

The Court: I have a note from the jury:

"Where and when Mr. Silver first identified Leon Washington after the crime? When was the next time Mr. Silver saw Washington?"

The first one, the answer is on Page 126, in the Felony Court after he had been arrested.

Mr. Wall: Excuse me, is that the testimony at the preliminary examination or did it say—

The Court: On cross-examination, "The first time you saw this defendant, and I'm talking now about Leon

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

Ralph McMurry, being duly sworn, deposes and says that he is employed in the office of the Attorney General of the State of New York, attorney for respondent herein. On the 29th day of August, 1975, he served the annexed upon the foilowing named person :

Patrick M Wall
36 W 44th Street
N. Y. N. Y.
10036

Attorney in the within entitled proceeding by depositing a true and correct copy thereof, properly enclosed in a post-paid wrapper, in a post office box regularly maintained by the Government of the United States at Two World Trade Center, New York, New York 10047, directed to said Attorney at the address within the State designated by him for that purpose.

Ralph J McMurry

Sworn to before me this
29th day of August, 1975

Joan P. Scannell
Assistant Attorney General
of the State of New York